IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.2479 of 2006 (O&M)

DATE OF DECISION: DECEMBER 4, 2006

Balbir Singh

...PETITIONER

VERSUS

State of Punjab and another

...RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr.J.S.Chahal, Advocate,
for the petitioner.

...

The petitioner has filed this criminal revision against the judgment dated 16.11.2006 passed by the Additional Sessions Judge, Fast Track Court, Ludhiana, whereby the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 29.7.2004 passed by the JMIC, Ludhiana, vide which the petitioner was held guilty for an offence under Section 138 of the Negotiable Instruments Act, has been dismissed.

I have heard the counsel for the petitioner and gone through the impugned judgments passed by both the courts below.

Counsel for the petitioner raised only one submission that the complainant has not proved that the cheque in question was issued by the petitioner against an existing liability. It was pleaded that the said cheque was taken by the complainant as a security. It is further argued that it was stated by the complainant that he gave a loan of Rs. 2,50,000/- to the

petitioner, but could not prove the fact that he was having that much of amount on the date when the loan was given. Similar contention was raised before the first Appellate Court, which has been rejected by it while observing as under:-

> "This contention is opposed by the learned counsel for the complainant-respondent. According to him, Jaswinder Singh CW1 deposed in his cross-examination that the amount was lying with him as he is doing the business of property dealer and running an electric machine. It is argued that there is no evidence if the blank cheque was given by the accused-appellant to the complainant. He also referred to the authorities Maruti Udyog vs. Narinder, 1989 ISJ Banking, 348 and Mohan vs. Vibha Kumar, 2004(1) ISJ Banking 222 and argued that there is a presumption under Section 139 of the Act that the holder of the cheque received it in discharge of a debt or liability. It was held that merely because the entries in the cheque are in the writing of another, it will not cease to be cheque. The issuance of cheque by the accused-appellant is fully proved and the same must be presumed for consideration. The accused-appellant has not produced any evidence to prove if he had borrowed only Rs.10000/- and not Rs.250000/-. The contention of the accused-appellant therefore, cannot be believed."

Learned counsel for the petitioner could not controvert the aforesaid factual and legal position nor could point out any illegality or

infirmity in the impugned judgments.

Hence, criminal revision is dismissed.

December 4, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE